IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

Chapter VIII, Rule 32(2) (b)
Description of case

Crl. Misc. Application No. 454 of 2006

Date of Decision: 23-6-2006

~~A.F.R. (Approved for Reporting)~~

~~_____~~

Not approved for reporting

Date:- 23-6-206 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 454 of 2006

Darshan Singh S/o Sardar Jairam
R/o Jawalapur, P.S. Jawalapur
Tehsil & Dsitrict Haridwar ....Applicant

Versus

1. State of Uttaranchal
2. District & Sessions Judge, Haridwar
   District Haridwar
3. IInd Special J.M. Haridwar,
   District Haridwar
4. Sudesh Kumar Monga
   S/o Bakshi Ram
   R/o 309 Govindpuri
   P.S. Jawalapur
   Tehsil & District Haridwar .....Respondents

Dated: -23rd June, 2006

Sri Parikshit Saini learned counsel for the applicant.
Sri Amit Bhatt and Sri G. S. Sandhu learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. The petition under Section 482 Cr.P.C. has been filed for quashing the orders dated 24.04.2006 passed by the sessions Judge, Haridwar in criminal revision No. 328/2005 and order dated 01.06.2004 passed by the IInd Special Judicial Magistrate, Haridwar in criminal complaint case No. 344/2006 Sudesh Vs. Ashish Diwedi & others under section 420 & 506 IPC.

2. Brief facts of the case are that a complaint under section 156(3) Cr.P.C. was filed against the applicant by the respondent No. 4- Sudesh Kumar Monga alleging therein the respondent no.4 has entered into a sale-deed for plot bearing Khasra no. 1121 with the applicant and Kanak Diwedi for the consideration of Rs. 4,25,000/- In this regard, Ashish Diwedi and Kanak Diwedi gave him cheque of Rs. 3 lakh. When the respondent No.4 submitted the said cheque in the bank, it was

dishonored by the bank due to insufficient fund in the account. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and thereafter he summoned the applicant vide order dated 01.06.2006. The Sessions Judge has also directed the applicant to file objection/protest before the Magistrate, who has passed the summoning order. Feeling aggrieved by both the orders, the applicant has preferred the present petition.

3. It was contended on behalf of the applicant that while dismissing the revision the Sessions Judge committed an error in directing the applicant to file objection/protest before the Magistrate, who had passed the summoning order. It was contended that such direction cannot be given and the Magistrate has no power to recall its earlier order. Learned A.G.A. could not support the direction passed by the sessions Judge. In view of the decisions of the Hon'ble Supreme Court in **Adalat Prasad Vs. Roop Lal Jindal Air SC(W) p/5174 and Subramanium Sethuraman Vs. State of Mahrashtra 2005 SCC(Cri) p/242,** the cognizance order cannot be challenged before the trial court and trial court has got no jurisdiction to recall its earlier order, which was already passed by him. In the aforesaid decisions, it has been held that the only remedy available to an aggrieved accused to challenge an order in an interlocutory stage is the extraordinary remedy under section 482 Cr.P.C. The only remedy for the applicant is to challenge the cognizance order under section 482 Cr.P.C. Therefore, the direction contained in

the order dated 24.04.2006 passed by the Sessions Judge is liable to be quashed.

4. It was further contended that the order dated 01.06.2006 passed by the magistrate was illegal and improper and the same has been passed without applying mind. It was further contended that no specific role has been assigned to the present applicant and the allegations against him do not constitute any offence. In exercise of the powers under section 482 Cr.P.C. the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The learned Magistrate should have put the questions to the witnesses. This is a case where the magistrate instead of proceeding under section 202 Cr.P.C. for recording the evidence should have directed either to the police or to any other person to make the inquiry and to submit its report. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. In this way, the entire evidence would have come and thereafter he should have proceeded to take cognizance.

5. In view of the above, the Magistrate has not applied its judicial mind. The Magistrate has to consider the statement on oath recorded under sections 200, 202 Cr.P.C. and other evidence filed on behalf of the complainant. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicant.

has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997 (8) S.C. p/705,** in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to being only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put question to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

6. The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence

and put the questions to all the witnesses as well as to the complainant.

7. In view of the above, the summoning order passed by the learned Magistrate is liable to be set aside. The Magistrate should have put the question to the complainant as well as to the witnesses to know the veracity of the incident.

8. Therefore, the summoning order dated 01.06.2004 passed by the IInd Special Judicial Magistrate, Haridwar in criminal complaint case No. 344/2006 and order dated 24.04.2006 passed by the sessions Judge, Haridwar in criminal revision No. 328/2005 are set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

9. The petition is disposed of accordingly. The misc. application, if any, is also disposed of.

(J.C.S. Rawat, J.)

Dated 23.06.2006
LSR